

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: § Group Art Unit: 3621
Nobuyoshu Morimoto §
§ Examiner: Elisca, Pierre E.
§ Atty. Dkt. No.: 5596-00300
§
Serial No. 09/613,339 §
§
§
Filed: July 10, 2000 §
§
For: SYSTEM AND METHOD FOR §
NEGOTIATING IMPROVED §
TERMS FOR PRODUCTS AND §
SERVICES BEING PURCHASED §
THROUGH THE INTERNET §
§

REPLY BRIEF

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

This brief is in reply to the Examiner's Answer dated March 5, 2007. Appellants respectfully request that this Reply Brief be entered pursuant to 37 C.F.R. §41.41 and considered by the Board of Patent Appeals and Interferences.

REPLY TO EXAMINER'S ANSWER

First Ground of Rejection:

Appellants have argued that the Examiner's rejection under 35 U.S.C. § 102(e) is improper because the Examiner has not shown that Schmid qualifies as a prior art reference. The December 20, 1999 provisional filing date can only be used as Schmid's 35 U.S.C. § 102(e) prior art date for the subject matter that is common to both the Schmid patent and the provisional application. The content of Schmid's provisional application differs from Schmid's published utility application. The Examiner has the burden to show that the subject matter on which the Examiner is relying to reject Appellants' claims is also present in Schmid's provisional application. Until the Examiner has made this showing, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

In fact, a brief review of Schmid's provisional application reveals that it varies greatly from Schmid's published utility application. It does not appear that all of the subject matter that the Examiner has relied upon to reject Appellant's claims is present in Schmid's provisional application. The subject matter not present in Schmid's provisional application cannot be used as prior art. Unless the Examiner can prove that the subject matter on which the Examiner is relying on to reject Appellants' claims is also entirely present in Schmid's provisional application, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

In the Examiner's Answer, the Examiner argues, "the Schmid patent provisional application 60/172,736 discloses the claimed limitations in pages 1-15" and that "Applicant's representative[s] argument is moot." However, merely making a broad unsupported conclusion that Schmid's provisional application "discloses the claimed limitations in pages 1-15" fails to meet the Examiner's burden regarding whether the material in Schmid relied upon by the Examiner was actually present in Schmid's provisional application. As noted previously, the Examiner *has the burden* to show that

the subject matter on which the Examiner is relying to reject Appellants' claims is also present in Schmid's provisional application. The Examiner has clearly failed to meet this burden. Also, the question is not whether the provisional application discloses Applicant's claims (which it does not), but whether the material in Schmid's published utility application relied upon by the Examiner in the rejection is also present in Schmid's provisional application. Thus, the Examiner has not even addressed the right question. Material found in Schmid's provisional application, but not in Schmid's published utility application, is not prior art. Likewise, material found in Schmid's published utility application, but not in Schmid's provisional application, is not prior art. Also, Schmid's provisional application itself is not a prior art reference. Only Schmid's published utility application can potentially qualify as a prior art reference, and then only for material that is also found in Schmid's provisional application.

Thus, the Examiner's statement in the Answer that the "Schmid patent provisional application 60/172,736 discloses the claimed limitations in pages 1-15" is not even relevant and does not demonstrate that all the portions of Schmid's published utility application used to reject the claims **qualify as a prior art reference**. Appellants' claims are not rejected over Schmid's provisional application. Instead, as noted above, Appellants have argued that in order to qualify as a proper prior art reference, the specific subject matter of Schmid's published application relied on by Examiner to reject Appellants' claims is also entirely present in Schmid's provisional application.

The Examiner's broad and conclusory statement that Schmid's provisional application discloses Appellants' claims does not demonstrate that the specific subject matter relied on by the Examiner is entirely present in Schmid's provisional application.

Additionally, the Schmid published utility application is not entitled to the December 20, 1999 date as a section 102(e) prior art date unless at least one claim of the Schmid published utility application is supported (under 35 U.S.C. § 112) in the provisional application. Under 35 U.S.C. 119(e)(1), a patent is not entitled to its provisional application's filing date as a prior art date unless at least one claim of the

published utility application is supported (per 35 U.S.C. § 112) in the provisional application. Upon review of Schmid's provisional application, it does not appear that the provisional application provides full § 112 support for at least one claim of Schmid's published utility application. Therefore, the filing date of Schmid's provisional application cannot be used as the prior art date for Schmid's published utility application. The rejection is improper unless the Examiner can show that Schmid's published application has the necessary claim support in the provisional application to be entitled to the provisional application's filing date as its § 102(e) prior art date. *See also* M.P.E.P. § 2136.03(III, IV). **The Examiner did not respond to this argument in his Answer.**

Since the Examiner has not provided the necessary evidence to show that the portions of the Schmid published utility application used to reject Applicant's claims qualify as prior art to the present application, the current rejection is improper.

Furthermore, in regard to many of the specific claim groups listed below, the Examiner attempted in his Answer to rebut Appellant's argument by referring to portions of Schmid's provisional application. However, Schmid's provisional application is not a prior art reference under 35 U.S.C. § 102(e). Therefore, the Examiner's references to Schmid's provisional application are not relevant to the rejection. Thus, the Examiner's remarks in his Answer are not relevant since they do not show that the relied upon teachings are found in Schmid's published utility application. The rejection is based on Schmid's published utility application, not Schmid's provisional application.

Claims 1, 11, 13, 14, 24 and 26 - 28:

Regarding claim 1, Schmid fails to disclose detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased using an Internet web site and in response to said detecting making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time.

As argued in Appellants' Appeal Brief, **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders. Specifically, Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to all of the lenders and each lender is invited to improve their corresponding quote. The borrower then selects a final quote. *See, e.g., Schmid, Abstract and paragraph [0008].*

The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

In the Examiner's Answer, the Examiner argues that the Schmid provisional application "discloses this limitation in pages 1-15" and specifically refers to page 3 "wherein said when the lending source issues a commitment letter to fund the loan." **However, as discussed above, Schmid's provisional application is not a prior art reference under 35 U.S.C. § 102(e). Therefore, the Examiner's references to Schmid's provisional application are not relevant to the rejection since the rejection is based on Schmid's published utility application, not the provisional application.** Moreover, Appellant respectfully disagrees with the Examiner's characterization of the teachings of Schmid's provisional application. The passage referred to by the Examiner teaches that in Schmid's system, after a borrower has negotiated with various lending

sources or financial intermediaries and after the borrower has chosen a lending source, application is signed and if the results of “third party reports” are successful, then “the lending source issues a commitment letter to fund the loan.” Presumably the Examiner’s argument is that a lending source funding a loan discloses detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased using an Internet web site and in response to said detecting making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time, as recited in Appellants’ claim.

Funding a loan is not the same as, nor does it disclose, making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time in response to said detecting. In contrast to Schmid, Appellant’s claimed invention relates to offering a purchaser a contract to negotiate improved terms for a product or service that the purchaser *has committed to purchase with associate terms using an Internet web site*. For example, once a purchaser has made a decision to buy a specific product or service over the Internet, the purchaser may use the services of a broker-agent program to attempt to beat the specific price within a specifiable time window, in one embodiment described in Appellant’s specification. Schmid’s borrower has not issued any commitment to purchase. Schmid never describes a borrower starting the processing of *potentially* obtaining loan as any sort of commitment to purchase (or a commitment to obtain a loan). Instead, Schmid’s system is intended to allow a borrower the option of accepting a loan from a lending source without a commitment. For example, Schmid states, “One can deduce that if the borrower accepts the terms of the loan (after negotiating with several lenders) he/she must be satisfied or he/she would not have signed the loan documents and obligated himself or herself to its term” (parenthesis added, page 3, last paragraph). Thus, Schmid clearly states that the borrower is only obligated (e.g., committed) to the loan after signing the loan documents to which the Examiner refers in the Answer. Thus, since (as specifically taught by Schmid) the borrower is not committed until after the lending source issues a commitment letter to fund the loan, the issuance of the commitment letter by the lending source cannot disclose **detecting a commitment to purchase a product or service being purchased**

using an Internet web site, nor does it disclose making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time in response to said detecting.

Schmid also fails to disclose conducting a search for the improved terms within the specified time if the purchaser accepts an offer. None of the Examiner's citations refers to a buyer accepting an offer for a contract for negotiating improved terms for a product or service being purchased over the Internet within a specified time. None of Schmid's loan offers can be considered an offer to accept or reject a contract for negotiating improved terms for product or service already committed to being purchased over the Internet within a specified time.

In the Examiner's Answer, the Examiner cites page 2 of Schmid and refers to where a "company's manpower, i.e. borrower, may call on three, four, five or more lending sources." However, the fact that a borrower may call on multiple lending source when seeking a loan does not disclose conducting a search for improved terms within a specified time if the purchaser accepts an offer. Firstly, when the borrower is calling on the "three, four, five or more lending sources" in Schmid, the borrower has not accepting any offer. In fact, even a cursory reading of Schmid clearly indicates that when the borrower is calling on the multiple lending sources, the borrower is seeking to obtain potential loan offers from the sources and cannot have accepting an offer yet.

Secondly, Schmid fails to describe that a borrower contacting multiple lending sources as a search *within the specified time*, as recited in Appellants' claim. In fact, Schmid teaches that after the borrower "forwards a package of financial data to each lending source," "the borrower *waits* for a response" (emphasis by Schmid). Thus, Schmid does not teach anything about a specified time. Instead, Schmid stresses that the borrower has to *wait* for the replies. For example Schmid also states, "Some lending sources may not respond at all leaving the borrower to wonder about the status of his loan request" (page 3, lines 1-2). The very fact that the borrower does not know whether a

lending source will respond at all clearly demonstrates that the Examiner's reliance on Schmid is clearly misplaced.

Thirdly, Appellants' claim recites conducting a search *for improved terms*. In contract, the contacting of lending sources referred to by the Examiner is not a search for improved terms. Instead, when Schmid's borrower contacts multiple lending sources, as relied on by the Examiner, the borrower has not yet obtained any terms. If fact, the entire point of Schmid's borrower contacting the lending sources is to obtain their respective, initial, loan offers – not to search for *improved terms*.

Moreover, the Examiner has failed to consider that Appellants' claim requires that the search for improved terms with a specified time is performed after making an offer to the purchaser to accept or reject a contract for negotiating improved term with the specified time and if the purchaser accepts the offer. When Schmid's borrower is contacting the multiple lending sources, the borrower such an offer has not made or accepted.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested.

Claims 3 and 16:

In regard to claim 3, Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting the purchaser viewing a particular web page**. The Examiner does not address this limitation nor does the Examiner cite any portion of Schmid in the rejection of claim 3. In fact, the Examiner has completely ignored the specific limitations of claim 3. Appellants have noted that Schmid fails to mention that detecting an issuance of a commitment to purchase *comprises detecting a purchaser viewing a particular web page*.

In the Examiner's answer, the Examiner states, "Schmid discloses this limitation in page 1 and pages 5-8, specifically wherein said if more than one deal were pending with prospective borrower or client, specifics about each deal would be viewable." The Examiner also states, "[p]lease note that this process is performed via commercialFunding.com web site and therefore commercialFundin[g] is capable of detecting or tracking the purchaser viewing a particular web page, and also page 7 for specific deal tracking." However, the mere fact that specifics about each of multiple lending offers are *viewable* has absolutely nothing to do with detecting a purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service. Additionally, whether or not Schmid's CommericalFunding.com is *capable* of detecting or tracking a purchaser viewing web pages does not *disclose* (e.g., anticipate in a rejection under §102) the specific limitation of detecting *the purchaser* viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site.

Additionally, the Examiner's reliance on Schmid's statement that the specifics of more than one deal being viewing is clearly misplaced. Appellants' claim recites detecting *the purchaser* viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Schmid, at the passage referred to in the Examiner's Answer, teaches that a global capitalization specialist (GCS) at the company providing Schmid's service to a lender (e.g., CommercialFunding.com) is able to view the details of multiple pending deals (Schmid's Provisional, page 7, last paragraph). A CGS or anyone else at the service provider viewing the specifics of multiple pending loan deals does not disclose detecting the purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. The Examiner's reliance on Schmid in the rejection of claim 3 is clearly misplaced.

Thus, for at least the reasons above, the rejection of claim 3 is not supported by the cited art and removal thereof is respectfully requested.

Claims 4 and 17:

Appellants have argued that **Schmid fails to disclose that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting said purchaser accessing a particular URL**. As with the rejection of claim 3, discussed above, the Examiner does not specifically address this limitation of claim 4. Instead, the Examiner merely lists claim 4 as rejected while failing to cite any portion of Schmid regarding the subject matter of claim 4. Schmid fails to mention anything regarding detecting a purchaser accessing a particular URL as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Furthermore, as described above regarding claim 1, **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

Appellants note that the Examiner has failed to specifically address this argument in the Examiner's Answer. However, regarding claim 3, discussed above, the Examiner asserts, "Schmid discloses this limitation in page 1 and pages 5-8, specifically wherein said if more than one deal were pending with prospective borrower or client, specifics about each deal would be viewable." The Examiner also states, "[p]lease note that this process is performed via commercialFunding.com web site and therefore commercialFundin[g] is capable of detecting or tracking the purchaser viewing a particular web page, and also page 7 for specific deal tracking." Please refer to Appellants' arguments above regarding claim 3, as they also apply to claim 4.

Claims 5 and 18:

Appellants have argued that Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being**

purchased by a purchaser using an Internet web site comprises detecting said purchaser clicking an icon to confirm order. As noted previously, Schmid does not mention anything about clicking an icon to confirm an order. In the Examiner's Answer, the Examiner merely states, "Schmid discloses this limitation in pages 3 and 7." Presumably, the Examiner is referring to Schmid's provisional application. However, neither Schmid's provisional nor his published application discloses anything about detecting the purchaser clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Regarding the passages (pages 3 and 7) referred to in the Examiner's Answer, page 3 of Schmid's provisional discusses a conventional process to select a lending source in which the borrower contact lending sources directly, while page 7 describes the management of potential loan deals by a GCS at a company (e.g., CommercialFunding.com) providing Schmid's service. Broad and general statements regarding contacting lending sources and managing potential loan deals does not *disclose* the specific limitations of Appellants' claim. Without some specific teaching by Schmid regarding detecting a purchase clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchase, the Examiner is merely speculating (impermissibly) in hindsight regarding the detailed functionality of Schmid's system. Such speculation is clearly improper in an anticipation rejection (i.e., a rejection under §102).

Therefore, the rejection of claim 5 is not supported by the cited art and removal thereof is respectfully requested.

Claims 6 and 19:

Appellants have argued that Schmid fails to disclose that **making an offer to the purchaser includes displaying the contract on a screen of a computer system used by the purchaser to purchase the product over the Internet.** Schmid does not mention anything about displaying, on a screen of a computer system used by purchaser, a contract for negotiating improved terms within a specified time as part of making an offer to the purchaser to accept or reject the contract. As discussed above regarding claim 1,

Schmid fails to disclose making such an offer to accept or reject a contract for negotiating improved terms within a specified time.

In the Answer, the Examiner argues that “[t]his limitation is disclosed by Schmid[’s provisional application] in page 1, specifically wherein said the invention is viewable on computer monitors in the form of a web site, and also page 7 for viewing deal contract.” Appellants submit that the Examiner’s reliance on these passages is misplaced. For example, at page 1, the Examiner is relying on the single sentence, “[t]he invention is viewable on computer monitors in the form of a web site.” However, a general statement that Schmid’s invention is viewable in the form of a web site does not *disclose* the specific limitation of Appellants’ claim.

Additionally, as noted previously, the discussion at page 7 of Schmid’s provisional refers to the system used by a GCS of a company providing Schmid’s service (e.g., CommericalFuncing.com). Thus, the discussion at page 7 Schmid teaches that a global capitalization specialist (GCS) at the company providing Schmid’s service to a lender (e.g., CommercialFunding.com) is able to view the details of multiple pending deals (Schmid’s Provisional, page 7, last paragraph). A CGS or anyone else at the service provider viewing the specifics pending loan deals clearly involves displaying loan details on a screen used by the GCS, but fails to disclose anything regarding displaying a contract on a computer system *used by the purchaser to purchase the product over the Internet.*

Thus, the rejection of claim 6 is not supported by the cited art and removal thereof is respectfully requested.

Claims 7 and 20:

Appellants have argued that Schmid fails to disclose **executing the commitment to purchase if the purchaser rejects the contract.** The Examiner fails to address this limitation in the rejection of claim 7. In fact, the Examiner fails to discuss or cite any

portion of cited art in rejecting claim 7, either in the rejection or in the Examiner's Answer. Schmid's system simply does not include executing the commitment to purchase a product or service purchased by a purchaser using an Internet web site if the purchase rejects a contract for negotiating improved terms within a specified time. Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

The rejection of claim 7 is not supported by the cited art and removal thereof is respectfully requested.

Claims 9 and 22:

Regarding claim 9, Schmid fails to disclose **that the improved terms comprise a better price, or a better delivery, or a better warranty or a better return policy compared to the terms associated with said commitment to purchase.** As with the rejection of many of the other claims, the Examiner has failed to provide a proper rejection of claim 9. The Examiner does not address the specific language, subject matter and/or limitations of claim 9. Presumably the Examiner is relying on the fact that Schmid teaches allowing a borrower to select from among multiple lenders to obtain a loan. However, in Schmid, the various terms provided by the lenders are not improved terms compared to terms associated with a commitment to purchase. In Schmid's system, the borrower has not committed to purchase a product or service with associated terms compared to which the lender's term may be considered improved terms. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose improved terms including a better price, a better delivery, a better warranty or a better return policy *compared to the terms associated with the commitment to purchase.*

In the Examiner's Answer, the Examiner argues that "this limitation is disclosed by Schmid['s provisional application] in page 3, specifically wherein said borrower may negotiate one lending against another to improve his/her position for better price or

quote.” Thus, the Examiner is relying Schmid’s teaching that a “borrower may negotiate one lending source’s terms against another to improve his position.” However, as argued previously and above, when the borrower is negotiating with multiple lending sources the borrower has not issued a commitment to purchase a product or service. Instead, when the borrower is negotiating with the lending sources, as described at page 3 of Schmid’s provisional application, the borrower is merely looking for potential loans and may not accept any of the loan offers (see e.g., Schmid’s provisional, page 2, paragraph 2 and page 3, last paragraph).

Thus, for at least the reasons above, the rejection of claim 9 is not supported by the cited art and removal thereof is respectfully requested.

Claims 10 and 23:

Appellants have argued that Schmid fails to disclose reading information associated with commitment to purchase, determining if the commitment to purchase represents an area of interest for an improved terms service provider and if the commitment to purchase represents an area of interest for the improved terms service provider, making the offer to the purchaser.

As with many others of the claims, the Examiner has failed to consider and/or address the specific language and limitations of claim 10. The Examiner has not cited any portion of Schmid in rejection claim 10. Moreover, Schmid clearly fails to disclose any of the limitations of claim 10. Thus, the Examiner has failed to provide a *prima facie* rejection of claim 10.

As described above, Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. There is nothing in Schmid’s system that can be considered reading information associated with a purchaser’s commitment to purchase a product or service with associated terms using an Internet web site. Additionally, Schmid does not disclose determining whether a

purchaser's commitment to purchase the product or service represents an area of interest for an improved terms service provider. Schmid is not concerned with determining whether a purchaser's commitment to purchase represents an area of interest for an improved terms service provider. **Appellants also note that the Examiner has not addressed Appellants' arguments regarding claim 10 in the Examiner's Answer.**

Thus, the rejection of claim 10 is not supported by the cited art and removal thereof is respectfully requested.

Claims 12 and 25:

Appellants have argued that Schmid fails to disclose that **executing the contract includes entering a legal contract with the purchaser to supply the product under the improved terms**. The Examiner has failed to address or consider this limitation of claim 12. The Examiner has not cited any portion of Schmid in rejection claim 12 that has anything to do with entering a legal contract with the purchaser to supply the product under improved terms. Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes and the borrower may select one of the submitted quotes. In order to anticipate claim 12, Schmid's system would have to include entering a legal contract with a purchaser to supply a product that the purchaser already committed to purchase. However, this does not occur in Schmid's system. The borrower of Schmid's system only commits to using Schmid's system and Schmid does not teach improving the terms for the obtaining the lender's quotes. Thus, in Schmid's system there is not legal contract with a purchaser to supply a product under improved terms.

In the Examiner's Answer, the Examiner argues that "this limitation is disclosed by Schmid in page 3, specifically wherein said borrower may negotiate one lending against another to improve his/her position for better price or quote." However, a borrower negotiation multiple lending source against each other fails to disclose the

specific limitation of executing the contract includes entering a legal contract with the purchaser to supply the product under the improved terms.

Claim 15:

Appellants have argued that Schmid fails to disclose a computer program configured to detect the issuance of the commitment to purchase by detecting the purchaser entering a credit card number or a pre-paid account number of a gift-certificate number.

The Examiner has failed to provide a proper *prima facie* rejection of claim 15. Firstly, the Examiner merely lists claim 15 as rejected, along with claims 1, 3-7, 9-31, 32-35 and 37-44, without addressing the specific limitations of claim 15. Secondly, in regard to claim 2, which recites similar subject matter to claim 15, the Examiner admits that Schmid fails to teach or suggest where detecting the issuance of the commitment to purchase includes detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate number. In the §103 rejection of claim 2, discussed below under the second ground of rejection, the Examiner relies on Andrews. Thus, the §102 rejection of claim 15, which recites similar limitations to subject matter recited by claim 2, is clearly improper. Thus, the rejection of claim 15 is not supported by the cited art and removal thereof is respectfully requested.

Appellants' note that the Examiner has never responded to Appellants' arguments regarding claim 15.

Claim 21:

In regards to claim 21, Appellants have argued that Schmid fails to disclose that the commitment to purchase includes a purchase order for which payment has been guaranteed by the purchaser. The Examiner has failed to provide a proper *prima facie* rejection of claim 21. Firstly, the Examiner does not cite any portion Schmid regarding

the rejection of claim 21. Nor does the Examiner address the specific limitations of claim 21. Moreover, Schmid makes no mention of any purchase order for which payment has been guaranteed by the purchaser.

Additionally, the Examiner admits that Schmid fails to teach or suggest that the commitment to purchase includes a purchase order for which payment has been guaranteed by the purchaser (*see* Examiner's rejection under § 103 of claim 8, which recites similar subject matter to claim 21). **Thus, the §102 rejection of claim 21, which recites similar limitations to subject matter recited by claim 8, is clearly improper.**

Appellants' note that the Examiner has never responded to Appellants' arguments regarding claim 21.

Claims 29 and 38-40:

In regards to claim 29, Appellants have argued that Schmid fails to disclose **detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price.** As described above regarding claim 1, Schmid fails to disclose anything regarding detecting that a purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. **Schmid is not concerned with and does not disclose detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders. The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. However, Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service.

In the Examiner's Answer, the Examiner argues that the Schmid provisional application "discloses this limitation in pages 1-15" and specifically refers to page 3 "wherein said when the lending source issues a commitment letter to fund the loan." However, as noted above regarding claim 1, the passage referred to by the Examiner teaches that in Schmid's system, after a borrower has negotiated with various lending sources or financial intermediaries and after the borrower has chosen a lending source, application is signed and if the results of "third party reports" are successful, then "the lending source issues a commitment letter to fund the loan." Presumably the Examiner's argument is that a lending source funding a loan discloses detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased using an Internet web site and in response to said detecting making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time, as recited in Appellants' claim. As Appellants' have argued previously, Schmid's system does not include detecting that a purchaser is about to make an original purchase *for a particular price*. In contract, Schmid teaches requesting quotes from various lenders from which the borrower selects a final quote for a loan. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

Appellants have also argued that **Schmid fails to disclose offering the purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price for said particular item or service.** The Examiner has merely listed claim 29 with the rejection of claim 1, even though claim 1 and claim 29 recite different limitations. In the Examiner's Answer, the Examiner merely states (in regard to claims 1, 3, 7, 10, 15, 16, 20, 23, 29 and 38-40) that Schmid's provisional application "discloses this limitation in pages 1-15, specifically page 3, wherein said when the lending source issues a commitment letter to fund the loan." However, nowhere does Schmid, either his

published application or his provisional application, mention anything about offering a purchaser an opportunity to enter into an alternative contract in which the purchaser agrees to wait a predetermined amount of time in exchange for a possibility of securing a better price. Instead, as noted previously, Schmid provides an electronic forum in which a potential borrower may view and select from multiple lending offers. The only contract (other than a final loan package) is Schmid's Exclusive Engagement Agreement, which is a contract to use the interactive on-line, real time bidding model of Schmid's invention to *potentially accept a loan*.

Appellants have also argued that Schmid fails to disclose **if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price**. Again, the Examiner has not made any arguments, nor cited any passage of prior art, specifically regarding this limitation of claim 29. The Examiner has not specifically addressed this argument in the Examiner's Answer. Instead, the Examiner merely states that Schmid's provisional application "discloses this limitation in pages 1-15." However, there is simply no description in Schmid regarding *purchasing an item at a better price and charging the purchaser a price between the better price and the particular price*. Schmid's system for allowing a potential borrower to select from among multiple loans has no relevance with making such a purchase at a better price and charging the purchaser a new price between the better price and an original price.

Thus for at least the reasons presented above, the rejection of claim 29 is not supported by the cited art and removal thereof is respectfully requested.

Claim 30:

Regarding claim 30, Appellants have argued that Schmid fails to disclose wherein if the original purchase is not available after the searching is complete, purchasing the

particular item for the purchaser at another price and charging the purchase the particular price. **The Examiner fails to address this argument in the Examiner's Answer.**

Claim 31:

Appellants have argued that Schmid fails to where said **detecting the issuance of the commitment to purchase includes detecting the purchaser entering a credit card number or a pre-paid account number of a gift-certificate number.** The Examiner has failed to provide a proper *prima facie* rejection of claim 31. Firstly, the Examiner merely lists claim 15 as rejected, along with claims 1, 3-7, 9-31, 32-35 and 37-44, without addressing the specific limitations of claim 31. Secondly, in regard to claim 2, which recites similar subject matter to claim 31, the Examiner admits that Schmid fails to teach or suggest where detecting the issuance of the commitment to purchase includes detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate number. In the §103 rejection of claim 2, discussed below under the second ground of rejection, the Examiner relies on Andrews. **Thus, the §102 rejection of claim 15, which recites similar limitations to subject matter recited by claim 2, is clearly improper, especially since the Examiner fails to address the limitations of claim 31 in the §102 rejection.**

Additionally, Appellants note that the Examiner has never responded to Appellants' arguments regarding claim 31.

Claim 32:

In regards to claim 32, Appellants have argued that Schmid fails to disclose that **detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting the purchaser viewing a particular web page.** The Examiner does not address this limitation nor does the Examiner cite any portion of Schmid regarding the rejection of claim 32. Nowhere does Schmid mention that detecting an

issuance of a commitment to purchase comprises *detecting* a purchaser viewing a particular web page. As noted above regarding claims 1 and 29, Schmid teaches a system in which lenders provide quotes for a loan to a borrower. However, Schmid's system does not in any way teach or suggest detecting a purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site.

In the Examiner's answer, the Examiner states (regarding claim 3), "Schmid discloses this limitation in page 1 and pages 5-8, specifically wherein said if more than one deal were pending with prospective borrower or client, specifics about each deal would be viewable." The Examiner also states, "[p]lease note that this process is performed via commercialFunding.com web site and therefore commercialFundin[g] is capable of detecting or tracking the purchaser viewing a particular web page, and also page 7 for specific deal tracking." However, the mere fact that specifics about each of multiple lending offers are *viewable* has absolutely nothing to do with detecting a purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service. Additionally, whether or not Schmid's CommercialFunding.com is *capable* of detecting or tracking a purchaser viewing web pages does not *disclose* (e.g., anticipate in a rejection under §102) the specific limitation of detecting *the purchaser* viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site.

Additionally, the Examiner's reliance on Schmid's statement that the specifics of more than one deal being viewing is clearly misplaced. Appellants' claim recites detecting *the purchaser* viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Schmid, at the passage referred to in the Examiner's Answer, teaches that a global capitalization specialist (GCS) at the company providing Schmid's service to a lender (e.g., CommercialFunding.com) is able to view the details of multiple pending deals (Schmid's Provisional, page 7, last paragraph). A CGS or anyone else at the service provider viewing the specifics of multiple pending loan deals does not disclose detecting the

purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. The Examiner's reliance on Schmid in the rejection of claim 32 is clearly misplaced.

Claim 33:

Appellants have argued that **Schmid fails to disclose that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting said purchaser accessing a particular URL.** As with the rejection of claim 32, discussed above, the Examiner does not address this limitation of claim 33. Instead, the Examiner merely lists claim 33 as rejected while failing to cite any portion of Schmid regarding the subject matter of claim 33. Schmid fails to mention anything regarding detecting a purchaser accessing a particular URL as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Furthermore, as described above regarding claims 1 and 29, **Schmid is not concerned with and does not disclose detecting a commitment to purchase a product or service being purchased using an Internet web site, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders.

In the Examiner's Answer (regarding claim 3), the Examiner asserts, "Schmid discloses this limitation in page 1 and pages 5-8, specifically wherein said if more than one deal were pending with prospective borrower or client, specifics about each deal would be viewable." The Examiner also states, "[p]lease note that this process is performed via commercialFunding.com web site and therefore commercialFundin[g] is capable of detecting or tracking the purchaser viewing a particular web page, and also page 7 for specific deal tracking." Please refer to Appellants' arguments above regarding claim 3, as they also apply to claim 33.

Claim 34:

In regards to claim 34, Appellants have argued that **Schmid fails to disclose that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting said purchaser clicking an icon to confirm order**. As with claims 32 and 33, the Examiner does not address the particular subject matter and limitations of claim 34. Nor does the Examiner cite any portion of Schmid in rejecting claim 34.

In the Examiner's Answer, the Examiner merely states (regarding claim 5), "Schmid discloses this limitation in pages 3 and 7." Presumably, the Examiner is referring to Schmid's provisional application. However, neither Schmid's provisional nor his published application discloses anything about detecting the purchaser clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchase a product or service using an Internet web site. Regarding the passages (pages 3 and 7) referred to in the Examiner's Answer, page 3 of Schmid's provisional discusses a conventional process to select a lending source in which the borrower contact lending sources directly, while page 7 describes the management of potential loan deals by a GCS at a company (e.g., CommercialFunding.com) providing Schmid's service. Broad and general statements regarding contacting lending sources and managing potential loan deals does not *disclose* the specific limitations of Appellants' claim. Without some specific teaching by Schmid regarding detecting a purchase clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchase, the Examiner is merely speculating (impermissibly) in hindsight regarding the detailed functionality of Schmid's system. Such speculation is clearly improper in an anticipation rejection (i.e., a rejection under §102).

Claim 35:

Appellants have argued that Schmid fails to disclose that **making an offer to the purchaser includes displaying the contract on a screen of a computer system used by the purchaser to purchase the product over the Internet**. The Examiner has not cited

any portion of Schmid to support the rejection of claim 35. Schmid does not mention anything about displaying, on a screen of a computer system used by purchaser, a contract for negotiating improved terms within a specified time as part of making an offer to the purchaser to accept or reject the contract. As discussed above regarding claim 1, Schmid fails to disclose making such an offer to accept or reject a contract for negotiating improved terms within a specified time.

In the Answer, the Examiner argues that “[t]his limitation is disclosed by Schmid[’s provisional application] in page 1, specifically wherein said the invention is viewable on computer monitors in the form of a web site, and also page 7 for viewing deal contract.” Appellants submit that the Examiner’s reliance on these passages is misplaced. For example, at page 1, the Examiner is relying on the single sentence, “[t]he invention is viewable on computer monitors in the form of a web site.” However, a general statement that Schmid’s invention is viewable in the form of a web site does not *disclose* the specific limitation of Appellants’ claim.

Additionally, as noted previously, the discussion at page 7 of Schmid’s provisional refers to the system used by a GCS of a company providing Schmid’s service (e.g., CommericalFunding.com). Thus, the discussion at page 7 Schmid teaches that a global capitalization specialist (GCS) at the company providing Schmid’s service to a lender (e.g., CommercialFunding.com) is able to view the details of multiple pending deals (Schmid’s Provisional, page 7, last paragraph). A CGS or anyone else at the service provider viewing the specifics pending loan deals clearly involves displaying loan details on a screen used by the GCS, but fails to disclose anything regarding displaying a contract on a computer system *used by the purchaser to purchase the product over the Internet.*

Claim 37:

Appellants have argued that Schmid fails to disclose reading information associated with commitment to purchase, determining if the commitment to

purchase represents an area of interest for an improved terms service provider and if the commitment to purchase represents an area of interest for the improved terms service provider, making the offer to the purchaser. As with many others of the claims, the Examiner has failed to consider and/or address the specific language and limitations of claim 37. The Examiner has not cited any portion of Schmid in rejection of claim 37. Thus, the Examiner has failed to provide a *prima facie* rejection of claim 10.

Moreover, Schmid fails to disclose any of the limitations of claim 10. As described above, Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. There is nothing in Schmid's system that can be considered reading information associated with a purchaser's commitment to purchase a product or service with associated terms using an Internet web site. Additionally, Schmid does not disclose determining whether a purchaser's commitment to purchase the product or service represents an area of interest for an improved terms service provider. Schmid is not concerned with determining whether a purchaser's commitment to purchase represents an area of interest for an improved terms service provider.

Appellants also note that the Examiner has never responded to Appellants' arguments regarding claim 37 in the Examiner's Answer.

Claims 41, 42 and 43:

In regards to claim 41, Appellants have argued that Schmid fails to disclose **detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price.** As described above regarding claim 291, Schmid fails to disclose anything regarding detecting that a purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price. The Examiner cites the Abstract and paragraphs [0008], [0014], [0017] and [0024 – 0031] of Schmid. Schmid teaches a method for negotiating loans on behalf of a borrower in which a plurality of

lenders are invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to the lenders and each lender is invited to improve their corresponding quote. The borrower then selects a final quote. *See, e.g., Schmid, Abstract and paragraph [0008].* **Schmid is not concerned with and does not disclose detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet for a particular price, as recited in Appellant's claim.** Instead, Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders. The borrower of Schmid's system has only committed to using Schmid's loan-finding service to obtain a loan. However, Schmid's system does not offer a contract to the potential borrower to negotiate improved terms for using Schmid's loan-finding service.

Schmid's system clearly does not include detecting that a purchaser is about to make an original purchase *for a particular price*. In contract, Schmid teaches requesting quotes from various lenders from which the burrower selects a final quote for a loan. Providing an electronic forum in which a potential borrow may view and select from multiple lending offers does not disclose making an offer to a purchaser to accept or reject a contract for negotiating improved terms for a product or service being purchased over the Internet in response to detecting an issuance of a commitment to purchase the product or service using an Internet web site.

The Examiner has never responded to Appellants' argument above regarding Schmid failure to disclose detecting an action by a purchaser that indicates that the purchaser is about to make an original purchase for a particular item or service over the Internet *for a particular price*.

Appellants have further argued that **Schmid fails to teach automatically delaying the purchase for a predetermined amount of time**. Once again, the Examiner fails to cite any portion of the cited art that mentions anything regarding automatically

delaying a purchase for a predetermined amount of time. **In fact, the Examiner has completely ignored this limitation of claim 41 and has, instead, merely listed claim 41 with his rejection of claim 1.** Schmid's loan competition system has nothing to do with delaying a purchase while a search is conducted for better terms. Nowhere does Schmid describe automatically delaying a purchase (that a purchaser is about to make for a particular item or service over the Internet for a particular price) for a predetermined about of time. Presumably the Examiner is relying upon the fact that Schmid teaches waiting a certain amount of time for lenders to provide loan quotes. However, allowing time for lenders to provide loan quotes is not the same as automatically delaying an original purchase that a purchaser is about to make for a predetermined about of time. Providing an online forum for collecting lending quotes does not disclose anything regarding automatically delaying a purchase for a predetermined about of time.

The Examiner has never responded to Appellants' argument above regarding Schmid failure to disclose automatically delaying the purchase *for a predetermined amount of time.*

Furthermore, Appellants have argued that the cited art fails disclose if said better price is found before said predetermined amount of time expires, purchasing the particular item or service for the purchaser at the better price and charging the purchaser a new price between said particular price and said better price. Again, the Examiner has not made any arguments, nor cited any passage of prior art, regarding this limitation of claim 29. Instead, as noted above, the Examiner has merely listed claim 29 with the rejection of claim 1. There is simply no description in Schmid regarding purchasing an item at a better price and charging the purchaser a price between the better price and the particular price. Schmid's system for allowing a potential borrower to select from among multiple loans has no relevance with making such a purchase at a better price and charging the purchaser a new price between the better price and an original price.

The Examiner has not specifically addressed this argument in the Examiner's Answer. Instead, the Examiner merely states, regarding claim 29, that Schmid's provisional application "discloses this limitation in pages 1-15." However, there is simply no description in Schmid regarding *purchasing an item at a better price and charging the purchaser a price between the better price and the particular price*. Schmid's system for allowing a potential borrower to select from among multiple loans has no relevance with making such a purchase at a better price and charging the purchaser a new price between the better price and an original price.

Appellants have also argued that Schmid fails to disclose **if said better price is not found before the predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price**. Once again the Examiner has failed to provide a proper, *prima facie* rejection. The Examiner has improperly failed to consider this limitation of claim 41. Moreover, Schmid does not teach anything regarding executing the original purchase for the particular item or service over the Internet for the particular price if the better price is not found before the predetermined amount of time expires. Schmid teaches that the borrower selects a final quote from among a number of lender quotes for a loan. Thus, in Schmid there is no original purchase to execute if a better price is not found before a predetermined amount of time expires. The **Examiner has never responded to Appellants' argument** above regarding Schmid failure to if said better price is not found before the predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.

Claim 44:

Regarding claim 44, Appellants have argued that Schmid fails to disclose **detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service over the Internet for a particular price**. Schmid teaches a system in which potential borrowers may select from among multiple loans being offered by lenders. Specifically, Schmid teaches a method for

negotiating loans on behalf of a borrower in which a plurality of lenders are invited to submit quotes. The borrower selects quotes from the responses and the corresponding lenders are invited to take part in a final quote event in which the best terms from the responding lenders are displayed to all of the lenders and each lender is invited to improve their corresponding quote. The borrower then selects a final quote. *See, e.g.,* Schmid, Abstract and paragraph [0008].

In the Examiner's Answer (regarding claim 1), the Examiner argues that the Schmid provisional application "discloses this limitation in pages 1-15" and specifically refers to page 3 "wherein said when the lending source issues a commitment letter to fund the loan." Appellants respectfully disagree. The passage referred to by the Examiner teaches that in Schmid's system, after a borrower has negotiated with various lending sources or financial intermediaries and after the borrower has chosen a lending source, application is signed and if the results of "third party reports" are successful, then "the lending source issues a commitment letter to fund the loan." Presumably the Examiner's argument is that a lending source funding a loan discloses detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service over the Internet for a particular price, as recited in Appellants' claim. As argued above, in Schmid, the borrower is not committing to accept the loan offer until the end of Schmid's process (e. e., until after Schmid's system obtains loan offers from multiple lenders and the borrower has reviewed the offers and decided to accept. Thus, Schmid's lending source issuing a commitment letter cannot be considered to **disclose** the specific limitation of Appellants' claim.

Appellants have also argued that Schmid further fails to disclose in response to **detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service over the Internet for a particular price, accessing a broker-agent web site for seeking a better price for the particular item or service within a predetermined amount of time. Nor has the Examiner addressed this limitation in the Examiner's Answer.** Once again, the Examiner fails to cite any portion of the cited art that mentions anything regarding accessing a broker-

agent web site for seeking a better price. **In fact, the Examiner has completely ignored this limitation of claim 44** and has merely listed claim 44 with his rejection of claim 1. In the loan competition system of Schmid, a list of potential lenders is prepared and a potential borrower selects from among them. Schmid's system does not include accessing a broker-agent web site in response to detecting an action by a purchaser that indicates that the purchaser is making an original purchase for a particular item or service of the Internet for a particular price. There is nothing about Schmid's system that discloses seeking a better price for a particular item or service by accessing a broker-agent web site.

Additionally, Appellant also argue that Schmid fails to disclose **if said better price is not found before the predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.** Schmid does not teach anything regarding executing the original purchase for the particular item or service over the Internet for the particular price if the better price is not found before the predetermined amount of time expires. Schmid teaches that the borrower selects a final quote from among a number of lender quotes for a loan. Thus, in Schmid there is no original purchase to execute if a better price is not found before a predetermined amount of time expires. The Examiner has never responded to Appellants' arguments regarding Schmid's failure to disclose if said better price is not found before the predetermined amount of time expires, executing the original purchase for the particular item or service over the Internet for the particular price.

Second Ground of Rejection:

Claims 2, 8, 31 and 36 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Schmid in view of Andrews (U.S. Patent 6,285,986). Appellant traverses this rejection for at least the following reasons. Different groups of claims are addressed under their respective subheadings.

Claim 2:

In regards to claim 2, Appellants have argued that Schmid in view of Andrews fails to teach or suggest detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site, wherein said detecting comprises **detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate**. The Examiner relies on Andrews and cites column 2, lines 37-48. The cited passage is part of Andrews' background section describing various aspects of online purchasing.

At the cited passage, Andrews teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter "payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped" (Andrews, column 2, lines 41-44). However, as argued in Appellants' Appeal Brief, the mere mention in Andrews that a user may "enter payment and shipping information" when purchasing an item, fails to teach or suggest the specific limitation of claim 2.

Neither Schmid nor Andrews, whether considered singly or in combination, makes any mention of a credit card number, a pre-paid account number, or a gift certificate number. Moreover, neither Schmid nor Andrews, whether considered singly or in combination, teaches or suggests anything regarding detecting a purchaser entering a credit card number, a pre-paid account number or a gift certificate number as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site. Appellants argument is, in part, that without some specific teaching or suggestion in either Schmid or Andrews regarding detecting a purchaser entering a credit card, pre-paid account or gift certificate number as part of detecting an issuance of a commitment to purchase a produce or service, the Examiner's combination of cited art cannot be said to teach or suggest the limitation of claim 2.

Appellants have also argued that the Examiner has not provided a proper motivation to combine the teachings of Schmid and Andrews. The Examiner states that it would have been obvious to combine Schmid and Andrews, “since the form of payment information can also include payment of credit card or gift certificate or account number.” However, the Examiner’s motivation has nothing do with combining Schmid and Andrews. Schmid’s system does not include the entering of payment information. In fact, as noted above, Schmid’s system includes finding better *loan* offers for a borrower. The borrower does not enter payment information to purchase the loan in Schmid. Moreover, as noted above, Andrews does not mention anything regarding detecting the entry of credit card, gift certificates or account numbers. The Examiner’s motivation is nothing more than a statement that Andrews’ payment information could include credit card or gift certificate or account numbers. Thus, the Examiner’s stated motivation has nothing to do with combining Schmid and Andrews.

Appellants note that the Examiner has never responded Appellants’ arguments regarding claim 2.

Claim 8:

Appellants have argued that the Examiner has failed to provide a *prima facie* rejection of claim 8. The Examiner has completely failed to address or consider the specific language and limitation of claim 8. Instead, the Examiner merely rejects claim 8 along with claim 2 even though claim 8 recites different subject matter than claim 2.

Appellants have also argued that Schmid in view of Andrews fails to teach or suggest where **the commitment to purchase comprises a purchase order for which payment has been guaranteed by the purchaser**. The Examiner relies on Andrews, citing column 2, lines 37-49. As described above regarding claim 2, the cited passage teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter “payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product

shipped" (Andrews, column 2, lines 41-44). However, as argued in Appellants' Appeal Brief, Andrews, even if combined with Schmid, fails to make any mention of a purchaser order for which payment has been guaranteed by the purchaser. Instead, the cited passage merely describes a user entering payment information when purchasing a product via "retail-oriented internet sites". However, purchase orders are not typically used to purchase items via retail-oriented internet sites. Andrews makes no mention of any purchaser orders. Nor does Andrews, whether considered singly or in combination with Schmid, mention anything about detecting an issuance of a commitment to purchase a product or service, where the commit to purchase includes a purchase order for which payment has been guaranteed by the purchaser.

Thus, not only has the Examiner failed to consider the specific language and subject matter of claim 8, the cited art, even when combined as the Examiner suggests, fails to teach or suggest the specific limitations of claim 8. Furthermore, the Examiner has failed to provide a proper motivation for combining Schmid and Andrews. The Examiner's stated motivation has nothing to do with the subject matter and limitations of claim 8.

Additionally, Appellants note that the **Examiner has never responded** **Appellants' arguments regarding claim 8.**

Claim 31:

In regards to claim 31, Appellants have argued that Schmid in view of Andrews fails to teach or suggest detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site, wherein said detecting comprises **detecting the purchaser entering a credit card number or a pre-paid account number or a gift certificate.**

The Examiner relies on Andrews and cites column 2, lines 37-48. The cited passage is part of Andrews' background section describing various aspects of online

purchasing. At the cited passage, Andrews teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter “payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped” (Andrews, column 2, lines 41-44). However, the mere mention in Andrews that a user may “enter payment and shipping information” when purchasing an item, fails to teach or suggest the specific limitation of claim 31. Neither Schmid nor Andrews, whether considered singly or in combination, makes any mention of a credit card number, a pre-paid account number, or a gift certificate number. Moreover, neither Schmid nor Andrews, whether considered singly or in combination, teaches or suggests anything regarding detecting a purchaser entering a credit card number, a pre-paid account number or a gift certificate number as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site.

Without some specific teaching or suggestion in either Schmid or Andrews regarding detecting a purchaser entering a credit card, pre-paid account or gift certificate number as part of detecting an issuance of a commitment to purchase a produce or service, the Examiner’s combination of cited art cannot be said to teach or suggest the limitation of claim 31.

Appellants have also argued that the Examiner has not provided a proper motivation to combine the teachings of Schmid and Andrews. The Examiner states that it would have been obvious to combine Schmid and Andrews, “since the form of payment information can also include payment of credit card or gift certificate or account number.” However, the Examiner’s motivation has nothing do with combining Schmid and Andrews. Please refer to the arguments above regarding the rejection of claim 2 for a more detailed discussion regarding the Examiner’s failure to provide a proper motivation to combine Schmid and Andrews.

Appellants note that the Examiner has never responded Appellants’ arguments regarding claim 31.

Claim 36:

The Examiner has failed to provide a *prima facie* rejection of claim 36. As with the rejection of claim 8, described above, the Examiner has completely failed to address or consider the specific language and limitation of claim 36. Instead, the Examiner merely rejects claim 36 along with claim 2 even though claim 36 recites different subject matter than claim 2.

Appellants have argued that Schmid in view of Andrews fails to teach or suggest where the commitment to purchase comprises a purchase order for which payment has been guaranteed by the purchaser. The Examiner relies on Andrews, citing column 2, lines 37-49. As described above regarding claim 2, the cited passage teaches that when accessing retail-oriented internet sites, a user may decide to purchase a product and may enter “payment and shipping information notifying the internet site how the user is going to pay for the product and to where the user would like the product shipped” (Andrews, column 2, lines 41-44). However, Andrews, even if combined with Schmid, fails to make any mention of a purchaser order for which payment has been guaranteed by the purchaser. Instead, the cited passage merely describes a user entering payment information when purchasing a product via “retail-oriented internet sites”. However, purchase orders are not typically used to purchase items via retail-oriented internet sites. Andrews makes no mention of any purchaser orders. Nor does Andrews, whether considered singly or in combination with Schmid, mention anything about detecting an issuance of a commitment to purchase a product or service, where the commit to purchase includes a purchase order for which payment has been guaranteed by the purchaser.

Not only has the Examiner failed to consider the specific language and subject matter of claim 36, the cited art, even when combined as the Examiner suggests, fails to teach or suggest the specific limitations of claim 36.

Furthermore, Appellants note that the Examiner has never responded to Appellants' arguments regarding claim 36.

CONCLUSION

For the foregoing reasons, it is submitted that the Examiner's rejection of claims 1-44 was erroneous, and reversal of his decision is respectfully requested.

The Commissioner is authorized to charge any fees (small entity) that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00300/RCK. This Reply Brief is submitted with a return receipt postcard.

Respectfully submitted,

/Robert C. Kowert/

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